

10/555,921

For the convenience of the Examiner, this exhibit is again submitted, this time as Exhibit A. It is to be stressed that neither the specification nor the claims are amended by this or the previous response and thus no amendment accompany this response.

It is respectfully submitted that the above appropriately addresses all of the matters raised in the Notice of Non-compliant Amendment. However, if anything further is required in order to respond to the outstanding Notice, please contact the undersigned by telephone to expedite handling of the same.

In addition, in the previous response, claims 13-20 and 22-27 are rejected, under 35 U.S.C. § 103, as being obvious in view of Callan et al. '038 (US 2003/0132038). The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

In response to the raised rejection, the Applicant notes that the earliest potential §102 date of the applied Callan et al. '038 reference is *January 14, 2003*, the date that this abandoned application was filed. Because this date is less than one year from the Applicant's priority date, and as Callan et al. '038 was published by "another," Callan et al. '038 is apparently being applied as a 35 U.S.C. § 103, or possibly a 35 U.S.C. § 102(e), reference against the pending claims.

As stated in the accompanying 37 C.F.R. § 1.131 Declaration, the Applicant invented the subject matter of the rejected claims prior to the effective date of the reference on which the rejection is based. See MPEP § 2132.01, *Publications as 35 U.S.C. 102(a) Prior Art* ("When the reference is not a statutory bar under 35 U.S.C. 102(b), (c), or (d), applicant can overcome the rejection by swearing back of the reference through the submission of an affidavit under 37 CFR 1.131") (citing *In re Foster*, 343 F.2d 980, 145 USPQ 166 (CCPA 1965)).

As Callan et al. '038 is not a statutory bar under 35 U.S.C. 102(b), (c), or (d), and as the accompanying 37 C.F.R. § 1.131 Declaration contains sufficient language and evidence in order to swear back of the Callan et al. '038 reference, the Applicant respectfully submits that Callan et al. '038 is no longer a proper art that can be applied against the presently claimed invention. Further, the Applicant respectfully submits that without the base

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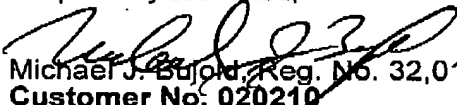
reference of Callan et al. '038, the ancillary rejections which are based upon such reference should also be withdrawn and thus the pending claims are now in condition for allowance.

In view of the above and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the applied Callan et al. '038 reference, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied reference, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

  
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